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SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on 22 March 2001, at 10 a.m.

Chairperson: Mr. DESPOUY (Argentina)

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The meeting was called to order at 10.10 a.m.

STATEMENT BY THE VICE-MINISTER FOR FOREIGN AFFAIRS OF THE CZECH REPUBLIC

1. Mr. PALOUŠ (Czech Republic) began by paying tribute to the High Commissioner for Human Rights and said his country respected but deeply regretted her decision to resign at the end of her term of office.

2. The Czech Republic was ready to play a constructive role in bringing into effect the principles enshrined in the Charter of the United Nations, especially universal respect for, and observance of, human rights and fundamental freedoms for all (Article 55). The only way to achieve that aim was to adopt a dynamic human rights policy and to institute dialogue on all human rights problems. Protection of human rights was primarily the responsibility of Governments. Although the collapse of the Czech Communist regime in 1989 had put an end to systematic human rights violations, not all problems had been solved, because of the challenges that had had to be met in the transformation of the political system and integration into Europe.

3. The Czech Republic admitted that the criticisms made of it by the international community and non-governmental organizations, especially with regard to protecting the rights of the Roma minority, were often justified. On the question of the Roma, progress had been made in bringing about their integration and emancipation, and communication between the Government and the Roma community had considerably improved. Both legislative and practical measures had been taken in education, employment, housing and migration. The establishment of community projects would enable the minority and majority groups to get to know one another better, to cooperate in defence of their common interests and to learn to trust one another. Those efforts should be supported by the international community. In that connection, the OSCE had helped the Czech Government to organize a workshop in Prague at the end of 2000 on the political participation of the Roma. The Czech Republic was determined to play an active role in the preparatory work for the World Conference against Racism, and in the Conference itself, which it hoped would yield some specific recommendations and results.

4. Cooperation with the human rights protection mechanisms was an obligation for Governments, and a necessary precondition in ensuring the effective operation of those mechanisms. At the end of 2000 the Czech Republic, to demonstrate its determination to cooperate with the mechanisms and to strengthen them, had sent a standing invitation to the High Commissioner for Human Rights and to all those exercising a mandate on behalf of the Commission. It urged all Member States to follow its example.

5. In the view of the Czech Republic, it was essential to condemn all violations of human rights wherever they occurred, not only for the sake of censuring their perpetrators, but also in an endeavour to establish dialogue, which was the only route to reconciliation in countries devastated by war or subject to totalitarian regimes. The diversity of the contemporary world inevitably led to differences of opinion. Respect for human rights called for toleration of those differences, but violations of the rights themselves could not be tolerated under any circumstances.

STATEMENT BY THE VICE-MINISTER FOR FOREIGN AFFAIRS OF LITHUANIA

6. Mr. JUSYS (Lithuania) said it was highly symbolic that the new millennium was beginning with the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The declaration and programme of action to be adopted at the Conference should be action-oriented and should set out concrete and measurable objectives which could readily be achieved at the national level. Lithuania, a country where people of 109 nationalities lived, had taken steps to secure the well-being of all groups in the population, including the national minorities. In 2000 it had ratified the Council of Europe's Framework Convention for the Protection of National Minorities and had prepared a programme for the social and cultural integration of the national minorities and another on the use and promotion of the national language. It had also paid special attention to vulnerable ethnic and national groups and, for that purpose, had adopted a programme for the integration of the Roma into Lithuanian society, while preserving their national identity.

7. Lithuania welcomed the fact that tolerance had been chosen as the main theme of the Commission's session. Human rights violations and conflicts were very often rooted in acts of discrimination and intolerance. Respect for the principles of non-discrimination and tolerance was indispensable for the functioning of democracy and for the stability and security of society. The importance of tolerance had become even more evident with globalization. Now that the General Assembly had proclaimed 2001 as the United Nations Year of Dialogue among Civilizations, Lithuania would be hosting, in April, an international conference on dialogue among civilizations. The participants would be discussing ways of pursuing dialogue to strengthen mutual understanding, tolerance, solidarity and cooperation among countries.

8. Lithuania welcomed the valuable work done by the international tribunals, especially the first convictions handed down by the International Criminal Tribunal for the former Yugoslavia. Recent events in the Balkans underlined the importance of finding ways to prevent the further escalation of violence. Lithuania was to assume the chairmanship of the Committee of Ministers of the Council of Europe in the autumn of 2001, and would be paying special attention to the Balkans.

9. Although ratification of the human rights treaties was essential, it must also be an occasion for countries to harmonize their laws to bring them into conformity with the provisions of the treaties. The recommendations of treaty monitoring bodies were very important in that respect. The length of the interval between the submission of the reports of States parties to the treaties and their consideration by the relevant bodies should be reduced because of the rapidly changing situations within countries. Lithuania took account of the observations by the treaty monitoring bodies in developing further its laws and institutions for the protection of human rights. For example, as part of its 2000-2004 programme of work, the Government was planning to draft laws and programmes to ensure equal opportunities for men and women, to prevent trafficking in human beings and to combat corruption. It had recently approved a national programme against sexual abuse of children and sexual violence against children. It had created an independent court system and established two posts of ombudsmen, one for equal opportunities as between men and women, and one for children. An Equal Opportunities Commission had also been established.

10. Non-governmental organizations and the media were two important parts of the machinery of human rights protection. The non-governmental organizations supplemented the work of governmental institutions. Matters of concern could be identified and solutions found by carrying out a variety of projects and surveys. It was clear that the adoption of legislation and the application of particular measures were not enough to protect human rights and foster tolerance and non-discrimination; awareness-raising and education were also needed in all sectors of society. The media also had a role to play in promoting the ideas of tolerance and mutual understanding among the various members of society.

STATEMENT BY THE MINISTER OF JUSTICE OF KAZAKHSTAN

11. Mr. ROGOV (Kazakhstan) said the 1991 Kazakhstan Independence Act gave priority to the rights and freedoms enshrined in the Universal Declaration of Human Rights and in the main international instruments. Since gaining its independence, Kazakhstan had implemented thoroughgoing political and economic reforms. The aim of the legislation was to strengthen the unity of Kazakh society, which was multi-ethnic, and to promote democracy and economic liberalism. All the fundamental rights and freedoms were written into the Constitution, including the right to life and the freedom of the individual, the right to private property, to health and to free primary education. Under the Constitution, the Kazakh people were free to choose their representatives to the various bodies, although the necessary conditions still had to be created to enable citizens to exercise that right. Kazakhstan had acceded to a wide range of international human rights instruments, and was now preparing fresh legislation, to include the appointment of a human rights ombudsman. It was also preparing to accede to the Statute of the International Criminal Court.

12. In 1998 the Government had undertaken to democratize society and political institutions, and to improve the electoral process at the national and local levels, the aim being to increase electoral turnout. Democratization had taken place in several stages: extending the powers of the representative bodies and reforming the Constitution so as to strengthen the role of Parliament and enhance the effectiveness of the legislative machinery; improving electoral law, the present system being based on pluralism and multi-partyism; and strengthening the independence of the court system so as to deprive the executive of control over the actions of judges and courts. In that regard, as part of the ongoing legal reform it had been decided to transfer to the Ministry of Justice certain institutions which had come under the Ministry of the Interior. Finally, an endeavour had been made to give greater weight to civil society and its institutions, which contributed significantly to the stability of the State, and to guarantee the freedom of the media and the press.

13. Kazakhstan had a successful economic record: macroeconomic stabilization, reduced inflation, improvements in the financial system, especially in lending, and privatization. It now had one of the highest GDPs among the member countries of the Community of Independent States (CIS). Kazakhstan had also undertaken a wide-ranging reform in the social field. The Government's work programme, which covered the period up to 2030, focused on the priorities defined by the international organizations, especially the United Nations, namely, to reduce unemployment and poverty through an employment and credit policy, to provide assistance to the poorest, especially women and children, and to implement a policy of micro-credits.

14. Kazakhstan was striving to see that women played a greater role in the country's social, economic and cultural life. It had made a priority of combating corruption, which was a threat to the security of the State and to democracy. It was endeavouring to preserve the political stability which it had enjoyed for 10 years, and not to become embroiled in international conflicts, especially those which occurred close to its borders. It condemned the tendency of some States to judge the human rights situation in other countries. Rather than seeking to exert political pressure, those States should be looking at matters objectively. Kazakhstan had chosen to be a State founded on democracy, the rule of law and human rights, and was engaged in building a free and civilized society, without harming anyone.

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS OF SPAIN

15. Mr. PIQUÉ (Spain) said the Spanish Government deeply regretted the High Commissioner's decision not to seek a fresh mandate. He was grateful for all the work she had done over the past four years, and wished her every success in her future activities.

16. Spain and the other member countries of the European Union shared the same values, reflected in the application of democratic principles and respect for human rights, and finding their clearest expression in the Charter of Fundamental Rights adopted by the Council of Europe at Nice in 2000. It was therefore of one mind with the statement made a few days previously by the Minister for Foreign Affairs of Sweden, which currently held the Presidency of the Council of the European Union.

17. On the international plane, Spain attached great importance to the promotion, protection and observance of human rights throughout the world. It therefore welcomed the holding of the World Conference against Racism, and the Spanish Government intended to play a part in financing it. The Conference should lead to the adoption of a declaration and programme of action that would indicate the means to be used to combat current and future forms of racism, by drawing lessons from the past, and to assist victims of racism. Spain would also make its contribution to eliminating discrimination and intolerance based on religion or belief, through a conference on education in freedom of religion and belief, tolerance and non-discrimination to be held in Madrid. The conference would adopt a document to provide guidance to States in the field of education. Spain took the view that the special dialogue in the Commission on tolerance and respect could make a useful contribution to the preparatory work for the Conference against Racism.

18. The Spanish Government was convinced that only democratic regimes based on the rule of law could secure full enjoyment of human rights, and that those rights were universal. Some political regimes were the source both of human rights violations and of armed conflict, either internal or international. Spain was participating in the efforts of the international community to bring such conflicts to an end. In some countries there were hopeful signs of a settlement, as in Colombia, where a peace process was ongoing. Spain supported that process, while unceasingly condemning the grave human rights violations committed, inter alia, by the paramilitary groups and the guerrillas. He wished to pay tribute in that respect to the work of human rights defenders in that country. It was essential to strengthen the judicial machinery in order to put an end to impunity. The Bureau of the High Commissioner for Human Rights in Bogota was doing important work in that regard, for which reason the Colombian Government should continue to

cooperate with it. The regional mechanisms, such as the OSCE or the Council of Europe, were playing a useful role in monitoring some conflicts, such as the one in Chechnya. In that respect, the Spanish Government hoped for a successful outcome to the dialogue and cooperation between the Russian authorities and the European institutions and organizations. He held out the same hopes for the process begun in Barcelona to secure peace, stability and development in the Euro-Mediterranean basin, and to put an end to phenomena of concern to the entire international community, such as the violence in Algeria. The Spanish Government was also gravely concerned at the present blockage in the peace process in the Middle East, especially in view of the serious human rights violations now taking place in the territories occupied by Israel. As in previous years, Spain and other member States of the European Union would be submitting a resolution condemning the settlement policy being conducted by Israel in the occupied territories. It appealed to all the parties to the conflict to renounce the use of force and resume the dialogue. The rigid attitude adopted by the Taliban leaders, who had imposed in Afghanistan rules which seriously undermined human dignity, especially the dignity of women, and the recent blowing up of statues belonging to the heritage of mankind for the sake of those rules, were also matters of grave concern. Confronted with those acts, it was even more necessary to encourage governments which were endeavouring, though encumbered with systems not conducive to respect for human rights, to undertake reforms designed to re-establish democracy and the observance of international human rights standards. To combat violations of those rights effectively, it was necessary above all to put an end to impunity, and Spain therefore appealed for ratification of the Statute of the International Criminal Court.

19. The question of the rights of the child was also of special interest to the Spanish Government, which had signed in New York the two Optional Protocols to the Convention on the Rights of the Child, and was now taking the necessary steps to ratify them. In May 2001, Spain would also be taking an active part, in Berlin, in the preparatory meeting for the Special Session of the General Assembly on Children, to be held in September 2001. The Spanish Government had also drawn up national and local plans to combat violence against women, especially within the family, a widespread phenomenon for which there was no excuse. Elderly persons were also a group that should enjoy special protection by States and the international community, and Spain therefore welcomed the opportunity to host in 2002 the World Assembly on Aging, which it hoped would open the way for intensified action by States and cooperation among them in that area.

20. The Commission was and must be the spearhead of action for human rights throughout the United Nations system. Emphasis should be placed on the important role played by the new mechanisms put in place in the field of economic, social and cultural rights, such as the Working Group on the Right to Development, which was doing remarkable work in spite of the difficulties it was encountering in carrying out its task. It should take account of the discussions taking place in other bodies, and institute dialogue with all the actors concerned. As to civil and political rights, the Spanish Government was determined to continue supporting the work of the Working Group responsible for drawing up a draft optional protocol to the Convention against Torture, with a view to creating an international monitoring mechanism to eliminate the practice of torture, even though that was primarily the duty of States and State institutions. The Spanish Government was also convinced that the death penalty, which no longer existed in Spain, had no

deterrent effect, and was joining with other member countries of the European Union in a campaign for the universal abolition of capital punishment, which was an abuse of the fundamental right to life, and in the meantime for a moratorium on executions.

21. Lastly, Spain would continue to cooperate with all the Commission's special mechanisms and all the bodies established under international human rights instruments. They should be given the means, and the requisite political and financial support, to perform their functions properly.

STATEMENT BY THE MINISTER OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

22. Mr. BATTLE (United Kingdom of Great Britain and Northern Ireland) paid tribute to the High Commissioner for Human Rights for her significant personal contribution to the promotion of human rights. As a former member and director of non-governmental organizations, he believed the importance of their participation in the work of the Commission could not be over-emphasized.

23. Much progress had been made in the question of human rights during the twentieth century. Many countries had ratified the relevant instruments, but ratification alone would not be enough to put an end to human rights violations. The treaties must be implemented, and there was still much to be done in that respect. The situation in a number of countries still gave rise to concern. In China, for instance, the pro-democracy activists and Falun Gong adherents were still being persecuted, the death penalty and administrative detention were still in force, and detainees were still being subjected to torture and degrading treatment. It was essential that China should withdraw its reservations to article 8 of the International Covenant on Economic, Social and Cultural Rights and should ratify the International Covenant on Civil and Political Rights. It was also to be hoped that the Chinese authorities would enter into dialogue with the Dalai Lama to find a long-term solution for Tibet.

24. A thorough investigation must also be conducted into the allegations of human rights violations in Chechnya, in order to prosecute and, where appropriate, punish those responsible. He welcomed Russia's willingness to work on those issues with the Council of Europe. As for Zimbabwe, he deplored the campaign of harassment against the judiciary, the expulsion of journalists and the orchestrated violence against members of the legitimate opposition, actions which ran counter to Zimbabwe's obligations under international human rights law and the Harare Commonwealth Declaration. Of course, no country could claim to be beyond reproach, and problems occurred in the United Kingdom. The British Government would always respond favourably to requests for visits by Special Rapporteurs and other mechanisms of the Commission, in order to demonstrate its commitment to further enhancing the protection of the fundamental rights of people in the United Kingdom.

25. The year 2001 was an important year for human rights, being the year of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Regional consultations had taken place throughout the United Kingdom in order to involve NGOs and all sections of civil society in preparations for the Conference, and to compile

examples of good practice. It was certainly necessary to look to the past in order to understand the problems arising today, but future generations would judge the international community by what it was doing now to deal with contemporary forms of racial discrimination. It was to be hoped that the Conference would focus on the problems of those who encountered racial discrimination in their daily lives. The United Kingdom would work to ensure that the World Conference achieved concrete outcomes in that sense. The Special Session of the General Assembly on Children, to be held in September 2001, would also be an excellent opportunity for the international community to renew its commitment to achieving the goals set at the World Summit in 1990. There too, the focus should be on concrete and achievable action for the future.

26. In recent years, a serious political debate had begun about the equitable management of the process of globalization. The United Kingdom had contributed to that debate, with the publication in December 2000 of a White Paper on eliminating world poverty. While globalization could generate wealth, it also threatened to widen the gap between rich and poor. It was therefore imperative to guarantee economic, social and cultural rights as well as civil and political rights. Globalization was boosted by the rapid expansion of global communications. Thus, increased access to information could bring about greater awareness of human rights at a world level, both in terms of the rights to which individuals could aspire and in terms of their violation. The result could be more democratization and increased accountability of governments. The benefits of globalization must be made to work for the poor. The new wealth created by globalization could, if managed wisely, lift millions of people in the world out of poverty; managed badly, it could lead to further marginalization and impoverishment. To harness the benefits of globalization, countries must set up effective systems of government, combat corruption and ensure respect for human rights. It was a question of promoting security and justice for all, along with the rule of law; but it was also a question of sustainable economics, because a people living in fear and repression could not display the necessary creativity for the economy to develop.

27. The United Kingdom, for its part, had endeavoured to contribute to international efforts for the promotion and protection of human rights. It cooperated with the Commission's mechanisms, and welcomed the decision to appoint a special representative of the Secretary-General on human rights defenders. The special representative's work should be financed from the regular budget of the United Nations and from budget funds for the treaty monitoring bodies, which were the cornerstone of the human rights protection system established by the United Nations. The United Kingdom was anxious to end the culture of impunity and had been a leading advocate of establishing the International Criminal Court. It intended to be among the first 60 States to ratify the Statute of the Court, and was contributing £50,000 to the Trust Fund for least developed countries to support their participation in the work of the Preparatory Committee. The United Kingdom was also strongly committed to the eradication of torture worldwide. The second phase of the anti-torture initiative taken by the Minister for Foreign Affairs had been launched in December 2000 and the British Government had contributed almost £300,000 to the United Nations Voluntary Fund for Victims of Torture. Lastly, the United Kingdom had ratified ILO Convention No. 182 on the Worst Forms of Child Labour, and was encouraging other Governments to do likewise. It was providing support to the ILO's programme for the elimination of child labour, which was one of the many contemporary forms of slavery that were still on the rise in the world.

28. In conclusion, he was convinced that, in the modern interdependent world, it was essential to think and act both globally and locally at the same time, to go from the general to the particular and from the abstract to the concrete. In the twenty-first century, everyone should be committed at the global level to implementing the universal values of human rights in all societies.

STATEMENT BY THE UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS OF POLAND

29. Ms. BERNATOWICZ (Poland) said the Polish Government had learned with regret that Mrs. Robinson, the High Commissioner for Human Rights, would not be seeking a second term of office. However, it welcomed her statement that she would continue to serve the cause of human rights and wished her every success in her future activities.

30. In today's world, States, civil societies, businesses and even individuals had become interdependent. The repercussions of certain events went beyond the geographical and social context in which they occurred. Poland was therefore convinced that the international community must strive to ensure security for individuals on the legal, political, social, economic, medical and psychological levels. No State or society could be secure if the individuals in it were not. The three keywords liberty, equality and dignity applied, in the first place, to individuals. According to article 1 of the Universal Declaration of Human Rights, all human beings were born free and equal in dignity and rights. All political authority emanated from the people, and must be exercised in its overriding interest. Only democratic institutions could guarantee full respect for the rights of individuals and the democratic world had a legitimate right to react if any State violated human rights. Laws must also seek to protect individuals and secure their inalienable rights. Any law inconsistent with that principle, no matter which State adopted it, must therefore be regarded as null and void.

31. Diversity, whether racial, linguistic, ethnic, national or religious, was a source of enrichment for humanity and should not give rise to conflict or injustice. Poland for its part, as a State governed by the rule of law, treasured democracy, good governance and tolerance. The previous year, it had hosted an international conference entitled "Towards a Community of Democracies". The final declaration adopted by the conference, called the Warsaw Declaration, had already been approved by over 100 States, and the Federal Republic of Yugoslavia had recently become a member of the newly-established Community. When a country failed to respect human rights and democratic rules, and when the domestic system of justice failed, the international community should take over. In that respect, the establishment of the International Criminal Court was a new chapter in the struggle for justice. Poland was convinced that only democracy could guarantee universal enjoyment of human rights, and without good governance there could be no democracy. The fundamental principles of good governance were respect for human rights, the rule of law, political openness, tolerance, responsibility, accountability, transparency and effectiveness. The link between human rights and good governance was confirmed by many international instruments and declarations, ranging from the Universal Declaration of Human Rights to the United Nations Millennium Declaration. As at the previous session of the Commission, Poland would be submitting a resolution on good governance which it hoped would be generally supported by members of the Commission.

32. Poland was playing an active part in the preparations for the Special Session of the General Assembly on Children, and would soon be ratifying the two Optional Protocols to the Convention on the Rights of the Child, concerning the involvement of children in armed conflicts and the sale of children, child prostitution and child pornography. As for racism, Poland was cooperating very closely with the European Union and other partners in preparing for the World Conference against Racism and hoped the Conference would prove successful. Poland would also be introducing a draft resolution on the AIDS pandemic, which particularly affected Africa and the scale of which had been acknowledged in the United Nations Millennium Declaration.

33. In the Declaration, adopted on 8 September 2000, Heads of State had also recognized their collective responsibility to uphold the principles of human dignity, equality and equity, and had clearly stated that civil, political, economic, social and cultural rights were for all and must be fully protected in all countries of the world. The time had now come for countries to implement that commitment. Poland, for its part, was determined to act to that end.

STATEMENT BY THE DEPUTY PRIME MINISTER OF THE SLOVAK REPUBLIC

34. Mr. FOGAS (Slovakia) thanked Mrs. Robinson, the High Commissioner for Human Rights, for the work she had done for human rights throughout the world.

35. In many cases, it was not financial resources that were lacking in societies, but ethical, cultural and social values, especially solidarity and justice. Since the Second World War, history had shown that economic prosperity and wealth were not necessarily reflected in greater social cohesion and an improved quality of life. It was now estimated that 20 per cent of the population were getting richer, while 80 per cent were getting poorer. To that must be added such things as organized crime, money laundering and corruption, which were not conducive to the stabilization of the economy. It was not therefore possible to speak of a lasting victory of democracy and free trade.

36. Slovakia supported the efforts of the international community to strengthen the protection of human rights and to enhance the operation of the treaty bodies, and was prepared to cooperate with the Special Rapporteurs of the Commission. It was also aware of the crucial role played by non-governmental organizations in the field of human rights. In the framework of preparations for the World Conference against Racism, in May 2000 the Slovak Government had adopted a plan of action to prevent all forms of discrimination, racism, xenophobia, anti-Semitism and intolerance. It had also set up a coordinating committee to implement the plan, and, also in May 2000, had organized a national conference on the subject. Generally speaking, it emphasized education and prevention, through the dissemination of information on the dangers of racism.

37. Slovakia was a party to most of the international and regional human rights instruments, which under its Constitution had precedence over national law. It had recently signed Protocol No. 12 to the European Convention on Human Rights, which contained a general clause prohibiting discrimination. It had also ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and would shortly be signing the two Optional Protocols to the Convention on the Rights of the Child.

38. The Slovak Constitution made provision for a number of mechanisms to guarantee respect for human rights and fundamental freedoms, and prohibited discrimination of any kind on any grounds. In February 2001 the Constitution had been amended to strengthen representative democracy at the regional level and the independence of the judiciary, which was now wholly independent of the executive. The amendment also strengthened the powers of the Constitutional Court and provided for the appointment of an ombudsman, who would be responsible for ensuring respect for the rights and fundamental freedoms of natural and legal persons when the public authorities acted contrary to the principles of a democratic State under the rule of law.

39. With regard to the rights of persons belonging to ethnic minorities, Slovakia had signed the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, instruments which aimed to ensure complete equality between the majority and the minority populations in all areas of economic, social, political and cultural life. Those issues were the responsibility of the Commission of the National Council for Human Rights and Minorities.

40. In conclusion, he could assure the Commission that Slovakia was doing all it could to eliminate all forms of discrimination, racism, xenophobia and anti-Semitism, and to establish a climate of tolerance and mutual understanding in society as a whole.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 5) (continued) (E/CN.4/2001/17, 18, 19; E/CN.4/2001/NGO/9, 10, 40, 117, 146, 163 and 174)

41. Mr. MEI YUNCAI (China) said the right to self-determination, which had been used by oppressed nations to fight against imperialism and colonialism in order to gain independence and liberate their peoples, was still of great relevance. It was a sacred principle whereby each people could choose its own political and social system as well as its own model of development and could oppose foreign aggression, interference and control and safeguard its sovereignty, independence and territorial integrity.

42. Interference in the internal affairs of other States by resorting to political pressure, economic sanctions and even armed invasion was a flagrant violation of the Charter of the United Nations and the right to self-determination. The same was true of incitement to secession, under the cloak of self-determination. All such practices should be firmly condemned by the international community.

43. China took the view that a fair and just solution to the question of Palestine that would enable the Palestinian people to exercise their fundamental rights, including their right to self-determination, was the only way to restore a lasting peace in the Middle East. Deeply concerned about the incessant violent conflict in that area, it hoped that the parties concerned would refrain from saying and doing things which were not conducive to the peace process, so as to create the necessary conditions for the renewal and acceleration of the peace negotiations.

44. Mr. SAHRAOUI (Algeria) said that the previous century had witnessed a broad movement for the emancipation of peoples, which was most fortunate, but the international community had not fully complied with its obligation to promote the right of peoples to self-determination, since some of them were still under foreign occupation. That was the case in the Middle East, where the Palestinian people were still being denied that fundamental right and for months had been suffering a violent and systematic repression. In that respect, tribute should be paid to all the martyrs of the Intifada, who would in human memory join the ranks of freedom fighters, held up by society as a model. The international community must therefore work for an urgent resumption of the peace process and of the quest for a just, comprehensive and final solution to the conflict in the Middle East. Such a solution, based on the principle of land for peace, must be conditional upon complete withdrawal of Israeli forces from the Arab territories occupied in 1967 and the restoration of the legitimate national rights of the Palestinian people, including their right to the creation of an independent State with its capital at Al-Quds al-Sharif. The international community must also ensure respect for international legality, and especially for the effective implementation of the decisions of the Commission on Human Rights at its special session in October 2000, and the recommendations of the commission of inquiry it had established. The continuing formation or extension of Israeli settlements on Palestinian land, confirmed by the High Commissioner in her report on her visit to the occupied Palestinian territories (E/CN.4/2001/114) also prompted the conviction that an international protection force should be created to guarantee the security of the Palestinian people.

45. In North Africa, the Sahrawi people too were still waiting to exercise their right to self-determination. In spite of the adoption 10 years ago of the United Nations peace plan, and the creation of MINURSO with the agreement of both parties, Morocco and the Polisario Front, and the subsequent signing of the Houston Accords, no tangible progress had been made in resolving the question of Western Sahara. To achieve a settlement, there must be a free, fair and impartial referendum, which would give the Sahrawi people the opportunity they had long awaited to make a fully independent choice and take charge of their future, thus resolving the dispute in a just and final manner, in strict accordance with international legality.

46. The CHAIRMAN invited the Special Rapporteur on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination to present his report (E/CN.4/2001/19) under item 5 of the agenda.

47. Mr. BERNALES BALLESTEROS (Special Rapporteur) said his report gave an account of his correspondence with the Governments of El Salvador, the United States of America and Guatemala in gathering information about the attacks carried out in Cuba between 1996 and 1998 by mercenaries who had been recruited in those countries or were making unauthorized use of their territory. The issue was still topical, since inquiries were ongoing, and on 17 November 2000 Luis Posada Carriles and three other persons implicated in financing and carrying out terrorist activities against Cuba had been arrested in Panama. Luis Posada Carriles had admitted having taken part in the attacks, which had been committed in 1999 and had resulted in several deaths and injuries. His admission presented an unparalleled opportunity to reveal the full scale of mercenary activity, which was wholly inexcusable, and to put an end, once and for all, to the impunity so far enjoyed by the perpetrators of those acts. It was to be hoped that Cuba and Panama would reach agreement on extraditing the accused persons and on instituting a just and impartial judicial procedure with due respect for the rights of the defence.

48. His main activity over the past year had been to prepare, in cooperation with the Office of the High Commissioner for Human Rights, the first meeting of experts on traditional and new forms of mercenary activities, which had been held in Geneva from 29 January to 2 February 2001, and which was reported in detail in document E/CN.4/2001/18. The persistence and diversification of mercenary activities was a matter for concern. It was also important to consider the criminal responsibility of mercenaries, and of the people who recruited, financed and planned their activities, and the new forms of mercenarism. It would be inconceivable that those questions should no longer appear on the agenda of the Commission and other United Nations organs. Resolutions from those bodies condemning mercenary activities emphasized that they hindered the exercise of the right of self-determination and gave rise to the worst violations of human rights.

49. To combat mercenarism more effectively, the legal definition of a mercenary found in article 47 of the Additional Protocol to the Geneva Conventions of 1949 (Protocol I) should be broadened to take account not only of existing mercenaries but also of people likely to become mercenaries and the organizations that recruited and trained them from various countries. Mercenaries had been reported in about 50 countries, mainly in Africa. They were therefore a worldwide phenomenon. Mercenarism took a variety of forms. Mercenaries intervened principally in armed conflicts, but might also hire themselves out to drug traffickers, commit acts of terrorism or assassinate political figures. In legal terms, mercenary operations should therefore be regarded as a mass violation of human rights involving not only the mercenaries themselves, but also those who recruited, trained and financed them.

50. The Commission had appointed a special rapporteur on mercenaries largely because mercenaries had impeded the exercise of the right to self-determination of African peoples, and were still doing so. Paragraphs 24 to 43 of the report described the armed conflicts in Africa in which mercenaries were taking part, including those in Angola and Sierra Leone. In the armed conflicts which had broken out recently in Africa, mercenaries were recruited not only directly by the combatant armies, but also indirectly, through private enterprises. Moreover, taking advantage of the gaps in international law, mercenaries were taking part not only in the fighting but also in arms dealing and in trafficking in diamonds and oil. The reason for the frequency and persistence of armed conflict was the existence of an illicit traffic in arms in which mercenaries were involved, as pilots or mechanics, in transporting weaponry, dealers or instructors on the ground. As shown by the armed conflicts in Afghanistan, Colombia or Sierra Leone, arms were paid for not only in cash but also in kind, with diamonds or precious stones, oil or drugs. He therefore endorsed the demand of the non-governmental organizations and the European Union for very tight controls on the diamond trade and the oil trade, and for sanctions against Governments, organizations and enterprises which took part in the illicit trafficking.

51. It was also worrying to see that military security firms were trying to take over functions which by definition belonged to the State, such as the maintenance of public order and military activities. It was therefore absolutely essential to regulate the activities of those firms, and to make sure they were always under the control of a competent public authority. The United Nations, through the Commission on Human Rights, must examine ways of combating mercenary activities and regulating the activities of such firms.

52. In amending the legal definition of a mercenary, account must be taken of the fact that a mercenary would typically have had a military career, especially as a former member of a special, commando or parachute unit, or would have received military training, and have experience of handling sophisticated weapons. The fact that a government was hiring the services of mercenaries, or contracting with firms which recruited mercenaries, in order to defend itself or strengthen its position in an armed conflict, did not make it legal or lawful to do so. Governments acted lawfully only when their actions fell within the bounds set by their constitutions and by the international treaties to which they were parties. In drawing up a broader definition of a mercenary, that aspect must be borne in mind. The rules of international customary and treaty law applicable to mercenary activities should, in essence, condemn recourse to mercenaries in the broad sense of a contract for the purchase and sale of military services not governed by international law, and which habitually led to the perpetration of war crimes and the violation of fundamental rights.

53. Only one more ratification or accession was needed for the International Convention against the Recruitment, Use, Financing and Training of Mercenaries to come into force. It was also necessary, in the draft code of crimes against the peace and security of mankind, to ensure that both mercenaries and those who recruited, used, financed and trained them were treated as criminally responsible. Lastly, it was vital that the Commission continue its study of the matter.

54. Mr. ATTAR (Saudi Arabia) said that the tragic events which had taken place since September 2000 in the occupied Palestinian territories showed that the right of peoples to self-determination, set forth in the Charter of the United Nations and the resolutions of the General Assembly and the Commission, was far from being a reality, because political considerations often outweighed humanitarian needs. The inalienable rights of the Palestinian people were still being openly flouted by Israel, which was obstructing the peace process in the Middle East.

55. The Government of Saudi Arabia was gravely concerned at the deteriorating situation in the occupied Palestinian territories. It called upon the international community and the Security Council to take the requisite measures in accordance with the Charter of the United Nations, including those in Chapter VII and Articles 1 and 55, so that the Palestinian people could finally exercise their right to self-determination and the establishment of their own independent State with Jerusalem as its capital. The Palestinians had opted for a just peace based on international law and United Nations resolutions. His Government therefore urged the members of the Commission to give effect to those resolutions by supporting the draft resolution to be submitted on the situation in Palestine, on purely humanitarian grounds and without taking any other factors into account.

56. Lastly, he pointed out that the right of peoples to self-determination was one of the universal and indivisible fundamental rights and that the international community must do everything possible to achieve it.

57. Mr. AKRAM (Pakistan), speaking on behalf of the Organization of the Islamic Conference (OIC), emphasized the importance of respecting the right of peoples to self-determination, which determined the achievement of all other human rights and fundamental freedoms enunciated in common article 1 of the International Covenant on Economic, Social and

Cultural Rights and the International Covenant on Civil and Political Rights, and also in Articles 1 and 55 of the Charter of the United Nations and operative paragraphs 1 and 4 of the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly in 1960. Any and every denial of that right was therefore a breach of the Charter of the United Nations.

58. The Palestinian people was still being deprived of its right to self-determination. As stated by the Special Rapporteur for the Sub-Commission, Mr. Gros Espiell, in his study of the right to self-determination (E/CN.4/Sub.2/405/Rev.1, para. 93), international law affirmed the legitimacy of the struggle of peoples under occupation "by every means available to them, when the possibilities of obtaining recognition of the right to self-determination by peaceful means have been exhausted". In defiance of international legality, Israel was continuing its policy of repression of the Palestinian people and expansion of its settlements, resulting in the displacement of Palestinians. The IOC was convinced, however, that no power in the world could win when a people was resolved to achieve its freedom.

59. The OIC would continue to support all peoples whose rights had been usurped by occupying Powers. It urged the international community, States and civil society to support their struggle to promote the principles and purposes of the Charter of the United Nations, and the implementation of the Universal Declaration of Human Rights, thereby strengthening international peace and security and respect for human rights.

60. Mr. AKRAM (Pakistan), speaking on behalf of his country, said that for more than 50 years, the people of Jammu and Kashmir had waited in vain to exercise their right to self-determination. Since 21 January 1990, when Indian occupation forces had fired on Kashmiris who were demonstrating peacefully against the occupation of their territory, the Kashmiri people had been waging a heroic but unequal struggle to free themselves from the yoke of foreign domination. The Indian forces, in complete impunity, were carrying on a brutal campaign of repression in Kashmir, declaring so-called "ceasefires" while thousands of Kashmiris were killed, wounded, incarcerated and tortured every day. Indian forces had even gone so far as to fire on innocent people who were following the funeral procession of a human rights activist, Mr. Jaleel Ahmed, who had been killed in detention three weeks before.

61 In view of the massive disinformation spread by Indian's propaganda, it was necessary to spell out, first, that the struggle of the Kashmiris could not be described as terrorism, it was the just and legitimate response of a people acting in self-defence against foreign occupation. All the colonial powers had labelled combatants for freedom as terrorists, and India was no exception. Great leaders such as Mandela and Mugabe had also been depicted as terrorists. Second, it was a spontaneous struggle by the Kashmiris themselves, who had never been subject to any external force. There was no foreigner among the thousands of young Kashmiris who had sacrificed their lives for the liberation of their territory. There was no international terrorism, contrary to the notion put about by India in order to conceal its campaign of repression in Kashmir. Third, it was a fact that the problem of Kashmir could only be resolved in accordance with the wishes of the Kashmiri people. As long as India failed to accept that fundamental reality, every peaceful solution to the Kashmiri conflict would remain a mirage. Fourth, the United Nations had a legal, political and moral obligation to foster such a peaceful solution. The agreement that had been concluded between India and Pakistan, with the approval of the Security

Council, still had binding force. Consequently, the Member States of the United Nations were under an obligation to hold the parties to their commitments and to ensure that they implemented the agreements entered into and the Security Council resolutions requiring a plebiscite to be held in Kashmir under United Nations supervision.

62. His delegation hoped that the members of the Commission would fulfil their duty towards the people of Kashmir "to promote the realization of the right to self-determination" and "to refrain from any forcible action which deprives peoples of that right", as laid down in the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

63. Ms. AL-HAJJAJI (Libyan Arab Jamahiriya) said the Arab Summit and the Summit of the Organization of the Islamic Conference, held in the autumn of 2000, had given a full picture of the facts about Palestinian resistance to Israeli occupation. The Israeli-Palestinian negotiations could not be equated with a peace process, being merely a solution Israel was imposing by force on the Palestinians. They were the weaker party, exposed to international pressure and to pressure by the occupying Power. To speak of the spread of a culture of peace under present conditions was to mask the unjust reality of the occupation of Palestinian territory in the Syrian Golan, and in part of southern Lebanon, by a colonizing State which also had at its disposal weapons of total destruction and was obstinately refusing to sign the Treaty on the Non-Proliferation of Nuclear Weapons. The invitation to establish a general peace was actually an invitation to subjection, capitulation and humiliation.

64. Referring to paragraphs 1 and 2 of the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), she said there was no difference between legitimate violence and the struggle of peoples for the right to self-determination. She called for mutual respect among nations, founded on justice and equity. A culture fostering the right of self-determination should be instituted, and it should be defended by every possible means.

Statements in exercise of the right of reply

65. Mr. LEVI (Observer for Israel), referring to a remark by the representative of Pakistan during his statement on behalf of the Organization of the Islamic Conference, to the effect that the struggle of peoples to decide their own future was legitimate "when peaceful means have been exhausted" for achieving recognition of their right to self-determination, said that, in the Middle East, not all peaceful means had been exhausted. The peace negotiations that had begun in 1993 and had led to a series of agreements had been resumed in July 2000. After the refusal of the Palestinians to accept the proposals put to them, and the ensuring acts of violence, the two parties had resumed their places at the negotiating table and had started talks at Taba, in Egypt, which had continued until elections had been held in Israel. During those talks, Palestinian negotiators had stated that the negotiating process was not succeeding, but after the elections they nevertheless asked for it to be resumed. The indications were that proposals in their favour were about to be made. The recourse to violence did not therefore seem justified, since recent events showed that not all peaceful means had been exhausted. He therefore invited members of the Commission to support the peace process through negotiations, and to condemn those who resorted to violence to attain their ends.

66. Mr. RAMLAWI (Observer for Palestine) said that, if Israel really wanted peace, it should begin by withdrawing its forces from the occupied Palestinian territories, as the Commission and other United Nations organs had been enjoining it to do for over 30 years. The initial bilateral negotiations instituted between Israel and the neighbouring Arab countries in 1991 in Madrid had been aimed at establishing a just and lasting peace in the region, and if the region was now ablaze, that was because Israel had unleashed a criminal war against the Palestinian people. The present situation was therefore the logical outcome of the policies conducted by Israel and the United States. The peace process was dead because Israel itself had killed it.

The meeting rose at 1.15 p.m.